

(b)(6)


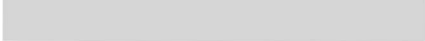
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

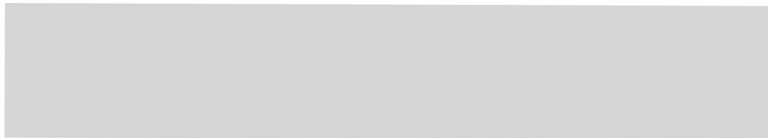


DATE: **MAY 05 2015** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on motion to reopen. We will dismiss the motion.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a middle school mathematics teacher at [REDACTED] Arizona. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

In our appellate decision dated November 18, 2014, we stated:

On the Form I-290B, Notice of Appeal, filed on February 27, 2014, the petitioner indicated that a brief and/or additional evidence would be forthcoming within thirty days. To date, eight months later, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

Because the petitioner failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, we summarily dismissed the appeal pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v).

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110.

On motion, counsel states:

I would like to ask for your permission to pardon my failure to submit the Brief and supporting evidence within 30 days. Honestly, I could not exactly remember what the reason actually was that caused my failure to do so. I have been trying my best to recollect potential circumstances but am of the belief that I must have mailed the promised documents within 30 days, however a diligent search of my records proved futile. I also remember that around said 30 day period after filing the Notice of Appeal, my father, who is 88 years of age and who had heart surgery last year, suffered internal bleeding and was hospitalized for about a month. I happen to be the one taking care of him and my mother in the house of my sister, who herself is a dialysis patient and under disability. Although, I do not live with them in

[REDACTED] NJ, I go [sic] their house regularly and almost everyday when my father was brought into the hospital.

The petitioner's motion is not supported by any documentary evidence to overcome the grounds of our decision dated November 18, 2014. In addition, the petitioner does not challenge our finding that she did not allege any specific error on the part of the director. Instead, the petitioner, through counsel, challenges the merits of the director's national interest waiver determination. Specifically, the petitioner asserts that her "proposed employment is national in scope" and that she "warrants waiver of the labor certification."

In this matter, the petitioner did not file a motion on the director's decision to deny the petition. Rather, the petitioner filed a motion on our summary dismissal of the appeal. The appeal was the petitioner's opportunity to contest the director's decision. On the Form I-290B, the petitioner requested an additional 30 days to supplement that appeal. When that 30-day period expired, so did the petitioner's opportunity to contest the director's decision. With respect to appeals, the regulation at 8 C.F.R. § 103.3(a)(2)(vii) provides that "[t]he affected party may make a written request to the [AAO] for additional time to submit a brief. The [AAO] may, for good cause shown, allow the affected party additional time to submit one." The petitioner, however, did not request any additional time beyond 30 days in which to submit the appeal brief.

On motion, we will only consider arguments and evidence relating to the grounds underlying our appellate decision. For example, if the petitioner had shown that a brief was timely filed, and that we erred by missing or disregarding that brief, then there would be grounds to reopen the proceeding. The petitioner has not done so in this proceeding. The petitioner did not file a meaningful appeal; the filing of a motion to reopen does not present an opportunity to rectify that oversight by disregarding the summary dismissal. The petitioner has not submitted any evidence showing that we should not have summarily dismissed the appeal, and we will not, at this late date, entertain the petitioner's untimely arguments pertaining to the director's decision dated January 23, 2014. In addition, the petitioner's motion does not contain the statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C).

The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion to reopen is dismissed, our appellate decision is affirmed, and the petition remains denied.